

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
CER Generation, LLC)	
Alexander City, Tallapoosa County, Alabama)	CONSENT ORDER NO. 17-__-CAP
)	
<u>Air Facility ID No. 310-0022</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and CER Generation, LLC (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates the Hillabee Power Plant, a natural gas-fired electric generating facility (hereinafter, the “Facility”), located in Alexander City, Tallapoosa County, Alabama (ADEM Air Facility ID No. 310-0022).

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer

and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Permittee operates a two Natural Gas-fired Combined Cycle Combustion Turbines (hereinafter, “CT1” and “CT2”) at the Facility under the authority of Major Source Operating Permit No. 310-0022 (hereinafter, the “Permit”), which was originally issued by the Department on May 9, 2011 and renewed on March 7, 2017.

5. Emission Standard No. 1 of the Permit section specific to CT1 and CT2 specifies the NO_x BACT limits as follows:

The nitrogen oxide emission rate from each combined turbine/duct burner stack shall not exceed 0.009 lb/MMBtu and 24.6 lb/hr. The nitrogen oxide emission rate shall be monitored using a rolling three-hour average computed by the continuous emission monitor system.

6. Proviso No. 1 of the Permit’s Emission Monitoring section specific to CT1 and CT2 states:

The continuous emissions monitoring system (CEMS) to measure nitrogen oxide emissions shall continue to be operated at a location approved by the Director. The nitrogen oxide emission rate shall be monitored using a rolling three-hour average computed by the continuous emission monitor system. The CEMS shall meet the specifications and procedures of 40 CFR Part 75 and will be certified and maintained in accordance with 40 CFR Part 75.

7. Proviso No. 1 of the Permit’s Compliance and Performance Test Methods and Procedures section that is specific to CT1 and CT2 states:

The continuous emissions monitor system (CEMS) required by Proviso 1 of the Emissions Monitoring section shall be used to determine compliance with the NO_x limits in Proviso 1 of the Emission Standards section. Method 20 of Appendix A in 40 CFR Part 60 may also be used to determine the nitrogen oxides and oxygen concentrations.

8. General Proviso No. 15(b) of the Permit states:

In the event that there is a breakdown of equipment or upset of process in such a manner as to cause, or is expected to cause, increased emissions of air contaminants which are above an applicable standard, the person responsible for such equipment shall notify the Director within 24 hours or the next working day and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The Director shall be notified when the breakdown has been corrected.

DEPARTMENT'S CONTENTIONS

9. On November 4, 2015, the Department received an application from the Permittee for the renewal of its Permit, which included a Compliance Schedule (ADEM Form 437) indicating non-compliance with the NO_x BACT limits of the Permit.

10. On February 21, 2017, the Department received from the Permittee NO_x emissions data for the times that CT1 and CT2 operated from 2011 to 2015. The data was compiled and showed a total of 1,125 discreet 3-hour averages in excess of the applicable NO_x emission limits of the Permit.

11. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty

assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. SERIOUSNESS OF THE VIOLATION: The Department considers the Permittee's exceedances of the NOx emission limits set forth in the Permit for CT1 and CT2 and its failure to notify the Department in the required timeframe to be serious violations. However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. THE STANDARD OF CARE: The Permittee failed to exhibit the requisite standard of care by exceeding the Permitted NOx emission limits for CT1 and CT2 and for failing to notify the Department of the violations in a timely manner.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department determined an economic benefit of \$5000 that the Permittee received by not injecting the necessary amount of ammonia into the SCR for proper NOx control.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts by the Permittee to minimize or mitigate the effects of the violation on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department's records indicate that there are no other similar violations upon which enforcement action was taken by the Department against the Permittee within the past five years.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

12. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (*See* “Attachment A”, which is hereby made a part of the Department’s Contentions).

13. The Department neither admits nor denies Permittee’s contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE’S CONTENTIONS

14. Permittee neither admits nor denies the Department’s contentions. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

15. Permittee’s Efforts to Minimize or Mitigate the Effects of the Violation
Upon the Environment:

- a. Permittee initiated independent 3rd party review of Continuous Emissions Monitoring System (CEMS) data acquisition system prior to discovery of violation.
 - b. Intent of 3rd party review was a voluntary post-merger (Constellation and Exelon) action taken to confirm that CEMS was functioning according to regulatory and Title V permit requirements.
 - c. After discovery of potential violation, Permittee immediately initiated internal peer reviews and discussions to validate and confirm findings of 3rd party draft review findings.
 - d. Within five days of review and confirmation of violation, Permittee requested CEMS software provider to initiate corrections to calculation of NOx lbs/MMBtu within data acquisition system.
16. Permittee submitted notification of NOx lbs/MMBtu calculation error in Title V Permit renewal application and in subsequent Compliance Certification Report.
17. Permittee fully cooperated with Alabama Department of Environmental Management (ADEM) to perform additional reviews as requested.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the

violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$60,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing every day thereafter.

D. The Permittee agrees to track and document all changes to the CEM system. At any time the Data Acquisition System is altered, verification and testing of the calculations/formulas shall be conducted by the Permittee or a designate of the Permittee. The Permittee shall retain records of the changes and the verification of the accuracy of the calculations/formulas on site in a form suitable for inspection for a period of at least five years from the date of record.

E. For each applicable NOx emission standard listed for CT1 and CT2 in the Permit, the Permittee agrees that it shall monitor and report NOx emissions according to the following requirements and conditions:

(1) NOx emissions shall be measured by the CEMS and averaged over rolling three-hour periods.

(2) A valid three-hour period is defined as having at least two valid hours in which the unit combusts fuel.

(3) A valid hour shall contain at least two data points in which the unit combust fuel.

(4) Data points are to be collected at least once in each fifteen-minute quadrant of the hour.

(5) At such time that a three-hour rolling average of measured NOx emissions exceeds the applicable emission limit, the Permittee shall begin a new three-hour rolling average with the fifteen-minute quadrant immediately following the three-hour rolling average of excess NOx emissions.

(6) Data recorded during periods of continuous monitoring system breakdown, repair, calibration checks, and zero and span adjustments shall not be included in the data averages.

F. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

G. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

H. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed

because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

K. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

L. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

M. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed

Orders to the public, and that the public have at least thirty days within which to comment on the Order.

N. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

P. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CER GENERATION, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Ginger Craig
(Signature of Authorized Representative)

Lance R. LeFleur
Director

Ginger Craig
(Printed Name)

Plant Manager
(Printed Title)

Date Signed: 7/19/2017

Date Executed: _____

Attachment A

CER Generation, LLC Hillabee Power Plant Alexander City, Tallapoosa County

Facility ID No. 310-0022

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to meet NO _x BACT Limit	1125	\$15,000	\$30,000	--	\$45,000.00
Failure to Notify Timely	1	\$5,000	\$5,000		\$10,000.00
<i>TOTAL PER FACTOR</i>		<i>\$20,000.00</i>	<i>\$35,000.00</i>	<i>--</i>	<i>\$55,000.00</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-)	\$0

Economic Benefit (+)	\$5,000.00
Amount of Initial Penalty	\$55,000.00
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$60,000.00

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.